IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M.No.5584 C of 2007 in
RSA No.458 of 2005 (O&M)

Date of Decision : 01.10.2007

Dr.Mrs.Parveen Sharma

…appellant/plaintiff

Versus

Sanatan Dharam Mahabir Dal and another

…Respondents.

VINOD K.SHARMA,J (Oral)

Present:- Mr.Jai Vir Yadav, Advocate for the applicant-appellant.

Mr.Rakesh Nagpal, Advocate for the respondents.

C.M.No.5584 C of 2007

For the reasons stated in the application, order dated 28.5.2007 is recalled and the case is restored on its original number. CM stands disposed of.

RSA No. 458 of 2005

This Regular Second Appeal has been filed against the judgment and decree dated 31.7.2004 passed by the learned Appellate Court vide which suit filed by the plaintiff-appellant for declaration that the order of termination was illegal, null and void and not binding upon the appellant-plaintiffs, with consequential relief i.e. reinstatement alongwith consequential benefits, has been ordered to be dismissed.

Learned trial Court decreed the suit by holding that termination being violative of principle of natural justice was null and void, therefore, granted a decree for declaration with consequential relief of reinstatement.

The defendant-respondents went in appeal. However, the learned appellate Court came to the conclusion that as the defendant-respondents was private

body and suit for enforcement of contract of service, was not competent, the appellant was only entitled to the damages for illegal termination. The relief granted by learned trial court was modified by holding the termination order to be illegal and void, and a decree for damages to the extent of three months salary alongwith house rent was passed in favour of the appellant-plaintiff. The appellant has challenged the decree and judgment dated 31.7.2004 passed by the learned Appellate Court by raising the following substantial question of law:-

(i) Whether the appellant can be denied the payment of back wages by attracting the principle of 'no work no pay' when there is no fault on the part of the appellant?

The learned counsel for the appellant by placing a reliance on the judgment of Hon'ble Supreme Court in case of **V.P.Ahuja vs. State of Punjab 2000(2) RSJ 127** contended that once the defendant was a registered society under the Society Registration Act, the suit for enforcement of contract of personal was sufficient. However, I find no force in the contention as the Hon'ble Supreme Court has no where laid down any law that a contract of service against the private body or individual is enforceable in law.

The order passed by the learned trial Court is inconsonance with law laid down in case of **Smt. J.Tiwari v. Jawala Devi Vidya Mandir (supra)** wherein Hon'ble Supreme Court has been pleased to lay down as under:-

"Rights and obligations of an employee of a private institution are governed by the terms of the contract entered into between the parties. Where under those terms the principal's services

were liable to be terminated on three months' notice, all that he would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of his services, he continued to be in service.

The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to the institution which is registered under the Societies Registration Act (1860). And if the provisions thereof are violated by it, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not however, mean that the institution if public or a statutory body. F.A. No.898 of 1961, D/- 17.5.1966 (All), Affirmed AIR 1976 SC 888, Rel.on."

As the suit filed by the plaintiff for enforcement of contract of personal service was not competent, the learned appellate court was justified in modifying the judgment and decree passed by the learned trial Court. The substantial question of law as raised does not arise for consideration in the present appeal, accordingly this appeal is dismissed.

[Vinod K.Sharma]
Judge

01.10.2007

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